IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29-01-2007

Coram :

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.40458 of 2002

R.N.Bera ... Petitioner

Vs.

1. The Commandant
Central Industrial Security Force,
CISF Unit, Chennai Port Trust, Chennai.

2. The Deputy Inspector General
Central Industrial Security Force,
Southern Sector, (Head Qrs.,)
Rajaji Bhavan, Besant Nagar,
Chennai - 600 090. .. Respondents

Writ Petition, seeking certiorarified mandamus is filed by the petitioner, under Article 226 of the Constitution of India, for direction to call for the records, relating to the Appellate orders, passed by the respondents herein and to quash the same and direct the respondents to take the petitioner into the strength of CISF as constable with all monetary benefits.

For Petitioner : Mr.M.Md.Ibrahim Ali
For Respondents : Mr.M.Dhamodharan, SCGSC

O R D E R

(Order of the Court was made by S.TAMILVANAN, J.)

The Writ of certiorarified mandamus is preferred by the petitioner, seeking to call for the records relating to the order, dated 27.11.2000, passed by the appellate authority, the second respondent herein, in order No.V-11014/50/2K/L&R (SZ)/7447, confirming the final order passed by the first respondent, dated 18.06.1999, in order No.V-15014/2/CISF/ESTT-1/RNB/2000/248 and quash the same and also to direct the respondents to take the petitioner into the strength of CISF as constable with all monetary benefits.

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2. It is not in dispute that the petitioner herein joined in Central Industrial Security Force (herein after called CISF) as Constable on 15.06.1994 and on completion of training, he was transferred to Madras Port Trust (now Chennai Port Trust) on 31.08.1995 and while he was so performing his duty, a memorandum of Article, under Rule 34 of the CISF Rules 1969 was issued on the petitioner, on 18.02.1999 along with supporting documents, and also a copy of the preliminary report, dated 25.02.1999, submitted by the Assistant Commandant, CISF Unit to the first respondent. The petitioner submitted his written statement of defence on 22.02.1999.

3. It is seen that the charge framed, originally against the petitioner, as Article of Charge is available in Annexure – I of the typedset, which reads as follows :

> " No.941401807 Constable R.N.Bera of CISF Unit, Chennai Port Trust, Chennai is charged with grave misconduct, indiscipline, negligence and facilitating crime in connivance with others. Const. R.N.Bera was instrumental in criminal conspiracy and theft of valuable imported materials by associating with others which happened at about 0350 hours on 9.1.99.The criminals with connivance of CISF Staff attempted to commit a theft of imported materials on 8/9.1.99 during the 'C' shift hours. Being a member of CISF, Const. R.N.Bera was supposed to inform to the higher officer for safeguarding the Chennai Port Trust materials, but he failed in his duty and exhibited gross misconduct and reprehensible conduct by himself facilitating the crime in connivance with others. Hence the charge."

4. The enquiry officer namely, Assistant Commandant / E.O, CISF Unit, after holding enquiry had held in his first enquiry report, dated 27.05.1999, as follows :

> " Constable R.N.Bera was instrumental in criminal conspiracy and theft of valuable imported materials from container in J.D-5 by associating with others which happened at about 03.50 hrs on 9.1.99.
> Hence, the article of charge-I of the charge memorandum No.V-15014/Estt.I/99/1468, dated 8.2.99 is proved beyond any doubt."

5. On receipt of the copy of enquiry report, the petitioner sent his written representation, dated 14.06.1999, whereby, the petitioner denied the charge framed against him, as false and baseless. He has further stated in his representation that he was sanctioned 15 days casual leave by the ' C ' company Commander, by issuing leave certificate, dated 08.01.1999, pursuant to the same, on the same date, 08.01.1999, along with

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his family members, the petitioner proceeded to his native place, Jaipur by the Jaipur Express, for which he had left the Port Trust Campus at about 4.00 p.m, on 08.01.1999 and therefore, the petitioner could not have participated in the alleged theft of imported valuable materials, committed on 09.01.1999, at 3.50 a.m, at the premises of Chennai Port Trust. The petitioner herein, further submitted his reply that he had never been instrumental for any criminal conspiracy with HC/GD B.S.Pakhare and constable Somveer Singh, as found by the Enquiry Officer, in his report.

6. Based on the first enquiry report, submitted by the Assistant Commandant, the first respondent herein, had passed his final order, dated 29.06.1999, whereby, awarded the penalty of ' dismissal of the petitioner from service, under Rule 29A Schedule - II of CISF Rules, 1969. Aggrieved by which, the petitioner preferred appeal before the second respondent herein. Considering the appeal preferred by the petitioner, the second respondent, by his order, dated 10.08.1999, allowed the appeal and thereby set aside the enquiry report submitted by the Assistant Commandant and also the final order, dated 29.06.1999 passed by the first respondent and directed the disciplinary authority to hold 'de novo' enquiry from the stage of issuing fresh specific and definite charge.

7. The operative portion of the aforesaid order of the second respondent, dated 10.08.1999 reads as follows:

> " I, therefore, set aside the enquiry report and also the final order, dated 29.6.99 passed by the Disciplinary Authority. The Appellant is re-instated and directed to report to CISF Unit, Ch.P.T. Chennai, within 15 days from the date of receipt of this order. It is further directed that the Disciplinary Authority will hold a de novo enquiry from the stage of issue of fresh specific and definite charge."

8. It is not in dispute that the second respondent had allowed the appeal preferred by the petitioner, by his order, dated 10.08.1999, whereby he set aside the enquiry report submitted by the Assistant Commandant and the final order passed by the Commandant, CISF, first respondent herein, on the ground that the Enquiry Officer had committed irregularities, which was not taken into consideration by the first respondent, the disciplinary authority. The second respondent ordered further, for conducting 'de novo' enquiry. Pursuant to the aforesaid order, dated 10.08.1999, the following Article of Charge, as seen in Annexure- II, was framed by the first respondent, thereby amended the earlier charge as follows :

> " CISF No.941401807 Constable R.N.Bera along with No.941401746 Constable Somveer Singh visited the residence of HC/GD B.S.Pakhare at about 1500 hours on 6.1.99. No.902332304, Constable J.J.Godwin of CISF Unit, Chennai Port Trust, Chennai noticed the above

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personnel while going to the residence of HC/GD B.S.Pakhare. After some times at about 1550 hrs No.844480598, Constable N.B.Rao noticed all the three personnel, while coming out from the family quarter of HC/GD.B.S.Pakhare recorded during the preliminary enquiry revealed that these personnel were instigated by constable R.N.Bera for arranging theft from the port premises. HC/GD.B.S.Pakhare further stated that he was on duty on 6.1.99 at JD-V, but he was not willing to commit the theft on that day. Hence, the date of theft was postponed as planned by these personnel and the theft of valuable imported materials from contained in JD-V had taken place at about 0350 hours on 8/9.1.99 at HD area which was noticed by Shri.Suthananthan, Shed Master of JD-V. The theft of valuable imported materials i.e. 11 numbers of C.B.Drums containing chloroguine and chloramohenical chemicals and 9 Nos of bales of imported costly raw silk was committed by criminals in connivance with the CISF Staff and others. Later on, the vehicle used for transporting the stolen materials were seized at about 0500 hrs on 9.1.99 and the stolen materials were also recovered subsequently. In this connection, a theft report No.I & II were also received from S.C. & SM.V-JD-V(N), dated 9.1.99. Constable R.N.Bera even though proceeded on leave on 8.1.99, he was the brain behind the conspiracy, instigating the other CISF Personnel and planned the theft. Hence the charge."

9. In the the enquiry report, submitted after the order for de novo enquiry, the enquiry officer, namely, the Assistant Commandant, CISF Unit, has given his finding that the Article of Charge – I, framed against the petitioner, as per the charge memorandum, dated 08.02.1999 was proved. Aggrieved by the said finding, the petitioner herein, submitted his written representation, dated 05.06.2000 to the first respondent. The first respondent, based on the enquiry report, filed by the Assistant Commandant, passed his final order, dated 18.06.2000, under Rule 29 (A) Schedule – II of CISF Rules, 1969, whereby ordered dismissal of the petitioner from service. Aggrieved by the order passed by the first respondent, the petitioner preferred appeal before the second respondent, who confirmed the final order, passed by the first respondent and dismissed the appeal, against which, the petitioner herein has filed this writ petition, challenging the impugned orders passed by the respondents.

10. Heard Mr.M.Md.Ibrahim Ali, learned counsel appearing for the petitioner and Mr.M.Dhamodharan, learned Standing Counsel for Central Government, who appears for the respondents.

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11. The learned counsel appearing for the petitioner, has questioned the Enquiry report and the impugned orders passed by the respondents, mainly on the following three grounds.

(a) The 'de novo' enquiry conducted by the Assistant Commandant, CISF is contrary to law and against principles of natural justice.

(b) The findings and conclusion arrived at by the enquiry officer, which are basis for awarding penalty of dismissing the petitioner from service are perverse and not sustainable in law.

(c) The punishment imposed by the first respondent and confirmed by the second respondent, is disproportionate, exorbitant and contrary to law, hence not sustainable.

12. The first contention raised on behalf of the petitioner is that the 'de novo' enquiry ordered by the second respondent and conducted by the Assistant Commandant, CISF Unit, are vitiated by principles of natural justice. According to the learned counsel for the petitioner, after allowing the appeal, preferred by the petitioner and having set aside the earlier enquiry report submitted by the Assistant Commandant, and after the final order passed by the first respondent, dated 10.08.1999, the second respondent could not have ordered for 'de novo' enquiry. We are of the considered view that the first respondent, being the appellate authority, is empowered under Section 9 (2) of CISF Act, 1968, to allow the appeal and set aside the earlier enquiry report, dated 31.05.1999 and also the final order, passed by the first respondent, dated 29.06.1999.

13. It is settled proposition of law that mere irregularity in the enquiry report is not sufficient for ordering 'de novo' enquiry and the sine quonan or pre condition required for ordering 'de novo' enquiry are :

(1) The authority ordering 'de novo' enquiry must be empowered with the power of setting aside the enquiry report, submitted by the enquiry officer and the order passed by disciplinary authority, either as appellate authority or revisional authority.

(2) Further, to order 'de novo' enquiry, there should be patent irregularity or illegality in the earlier enquiry report submitted by the enquiry officer, and

(3) Without setting aside the earlier report, based on adequate reasoning, 'de novo' enquiry, cannot be ordered by the authority.

14. The latin term 'de novo' convey the meaning 'afresh', 'a new'. For setting aside the earlier enquiry report and for ordering 'de novo' enquiry, as discussed earlier, mere irregularity in the procedure followed by the enquiry officer would not be sufficient. Unless there is patent irregularity or illegality, the authority cannot mechanically order for 'de novo' enquiry, by setting aside the earlier enquiry report and the order passed by the disciplinary authority.

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15. The Division Bench of this Court has held in the decision S.Goparam v. I.G., Central Industrial Security Force, reported in (2006) 4 M.L.J 274, that the appellate authority, as per Section 9 of CISF Act, 1968, cannot pass any order for suo moto review. Here in this case, the second respondent has not passed any order on the basis of suo moto review, but, being appellate authority, while considering the appeal preferred by the petitioner on merits, held that the enquiry officer had committed certain irregularities in his enquiry report, dated 31.05.1999, which warranted the appellate authority to allow the appeal and to set aside the earlier enquiry report and also order for 'de novo' enquiry.

16. As per the order of the appellate authority, dated 10.08.1999, the charge already framed against the petitioner herein, was not proved, with reference to the statements recorded during the course of enquiry and the findings of the enquiry officer failed and according to the appellate authority, the disciplinary authority had not taken into consideration of all the irregularities committed by the enquiry officer and on that ground, the appeal preferred by the petitioner herein was allowed and the enquiry report submitted by the Assistant Commandant, CISF, dated 31.05.1999 and the final order, dated 29.06.1999, passed by the first respondent, were set aside by the appellate authority and 'de novo' enquiry was ordered. Considering the seriousness of the alleged occurrence, we are of the view that there is no illegality in the order passed by the second respondent, to conduct 'de novo' enquiry, after having setting aside the earlier enquiry report, on the ground of patent irregularity.

17. According to the petitioner herein, his request for change of enquiry officer was not considered by the respondents. The said plea for transferring the enquiry officer was raised by the petitioner, on the ground that the enquiry officer, appointed, had been subordinate to the previous commandant, who passed the earlier order of dismissal against the petitioner and as such there was possibility for the enquiry officer being guided by the earlier commandant, and raised apprehension, that he would not get proper justice from the said enquiry officer, but the same was not considered by the respondents. The next contention raised on behalf of the petitioner is that the request of the petitioner, seeking to appoint one Shri.T.M.Nair, NISA, working in Hyderabad as his Defence Assistant, was also rejected by the Enquiry Officer and hence, the same has to be construed as denial of reasonable opportunity to the petitioner, and as such, the enquiry proceeding was vitiated by principles of natural justice.

18. We are of the considered view that denial of reasonable opportunity to any delinquent in a Departmental Enquiry proceeding is against the principles of natural justice, and that would vitiate the Departmental Enquiry. Similarly, if it is substantiated by supporting materials to establish that due to some reason or other, the Enquiry Officer had prior personal bias, against the delinquent official, the plea

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of the delinquent official to change the Enquiry Officer would be maintainable.

19. It was not denied by the respondents that the enquiry officer had been subordinate to the previous Commandant, who passed the earlier order of dismissal against the petitioner, but there is no supporting material to show that the Enquiry Officer had prior personal bias against the petitioner. In the decision State of Punjab v. V.K.Khanna reported in (2001) 2 SCC 330, at page number 336, the Hon'ble Apex Court has held as follows :

> " The tests of 'real likelihood' and 'reasonable suspicion' are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough..."

In the light of the aforesaid decision of the Hon'ble Supreme Court, we are of the considered view that merely on the ground that the Enquiry Officer was subordinate to the earlier commandant, who passed the order of dismissal of the petitioner from service, the petitioner cannot raise any reasonable apprehension and thereby seek change of Enquiry Officer and further, as discussed earlier, there is no supporting material to hold that the Enquiry Officer had any prior personal bias against the petitioner herein.

20. Mr.M.Dhamodharan, learned Standing Counsel for Central Government, contended that the petitioner cannot ask a particular official from Hyderabad to be appointed as his Defence Assistant, since, there were about 800 personnels working in CISF Unit, Chennai, and according to him, the petitioner had informed to suggest three names of CISF officials, who are working in Chennai, in order to appoint any one of them, out of the three officials, to be suggested by him, as Defence Assistant for the petitioner, but having failed to avail the opportunity given to him, the petitioner cannot raise the aforesaid defence belatedly, at this stage, and hence, the same is not sustainable. It is further contended on behalf of the respondents that on account of Administrative convenience and to avoid unnecessary expenditure, to be incurred by the Government, the request of the petitioner to appoint a particular official of NISA, Hyderabad, as his Defence Assistant was rejected by the respondents.

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21. After having gone through the facts and circumstances discussed earlier, we are of the considered view that the plea of the petitioner, seeking an order to change the enquiry officer, merely on the ground that the enquiry officer had been subordinate to the earlier Commandant, who passed an adverse order against the petitioner, is not sustainable to change the enquiry officer. The petitioner could have suggested any three names of the officials working at the CISF Unit, Chennai, as intimated to him, in order to appoint any one of them as his Defence Assistant, hence, we are of the considered view that the petitioner, having failed in furnishing three names of CISF officials working in Chennai Unit, so as to approve one of the three officials, as his Defence Assistant, cannot seek an order for appointing a particular official, working in Hyderabad, to be his Defence Assistant, and therefore, we hold on the facts and circumstances that the rejection of the request of the petitioner in appointing a particular official, working in Hyderabad to be his Defence Assistant cannot be construed as denial of reasonable opportunity or violation of principles of natural justice, as contended by the learned counsel for the petitioner. We are in agreement that in writ jurisdiction, under Article 226 of the Constitution, this court normally cannot interfere with the finding of the authorities, by way of re-appreciation of evidence and it is settled proposition of law, that unless the finding of the authority is perverse or illegal, this court cannot interfere with the same, based on certain irregularities with the finding of the impugned orders, passed thereon.

22. The second contention raised by the learned counsel for the petitioner is that the finding of the Enquiry Officer, who conducted the de novo enquiry, is contrary to the evidence and as such the same has to be construed as perverse finding, liable to be set aside, and the order of dismissal of the petitioner, passed by the first respondent and confirmed by the second respondent, based on the finding of the Enquiry Officer are also not sustainable in law.

23. The Hon'ble Supreme Court of India in the decision South Bengal State Transport Corporation v. Sapan Kumar Mitra, reported in (2006) 2 SCC 584, at page number 596, has ruled thus :

> " 19... when the finding of fact was arrived at without any material or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law would have come to that determination, the decision can be said to be perverse."

24. In the light of the rulings of the Hon'ble Apex Court, we are of the view to hold that the finding of an Enquiry Officer would be construed as perverse finding, only when the finding is against the evidence or such finding is not supported by any evidence.

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25. According to the learned counsel for the petitioner, there is no cogent and corroborative evidence against the petitioner to prove the charge levelled against him and that the impugned orders passed by the respondents, based on the perverse findings, and hence, liable to be set aside. According to him, the appellate authority, namely, the second respondent herein, without considering the order passed by the first respondent, based on the perverse finding, has mechanically confirmed the order of the first respondent, contrary to the CISF Rules 1969 and principles of natural justice and on that ground, pleaded that the impugned orders are liable to be quashed.

26. Learned counsel for the petitioner would further contend that the prosecution witnesses, who had already given statements against the petitioner, have retracted their statements in the de novo enquiry, stating that the petitioner had never involved in the criminal conspiracy and that they had given their earlier statements against the petitioner, only on compelling circumstances. Hence, learned counsel for the petitioner contended that the finding of the Enquiry Officer in the 'de novo' enquiry is against the evidence available on record and as such the finding is perverse and the order of dismissal passed by the first respondent, confirmed by second respondent, based only on the perverse finding and hence, not sustainable in law.

27. As per the case of the respondents, Head Constable B.S.Pakhare (P.W.1), constable, Somveer Singh (P.W.2), and the petitioner herein had conspiracy on 06.01.1999 to commit the theft on 09.01.1999, at 3.50 a.m, in the premises of Chennai Port Trust. But, it is not in dispute that the petitioner had gone to his native place, Jaipur, on the date of occurrence on 09.01.1999, pursuant to the leave sanctioned by the Group Commandant. It is seen that in the charge framed against the petitioner, after the order for 'de novo' enquiry, that it has been further incorporated in the earlier charge, that the petitioner had arranged for the theft on 06.01.1999, and he was the brain behind the conspiracy. As per the Enquiry report, dated 13.05.2000, it has been stated that on 09.01.1999, at about 3.50 a.m, valuable imported materials were stolen at the Chennai Port Trust premises, by break opening the lock of the container JD-V, and the stolen goods were transported in the lorry bearing Registration No. TMW 9412.

28. According to the respondents herein, Head Constable B.S.Pakhare (P.W.1) and Constable Somveer Singh (P.W.2), had directly involved in the theft, which was committed on 09.01.1999, but, they were made as prosecution witnesses, P.W.1 and P.W.2, against the petitioner in the 'de novo' enquiry. As stated in the enquiry report, the said witnesses have specifically denied the alleged conspiracy and involvement of the petitioner, in the alleged theft case. The other prosecution witnesses have not spoken to anything about the conspiracy of the petitioner in the alleged occurrence of theft, that had taken place on 09.01.1999.

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29. According to the petitioner, there could be no incident of theft, as alleged by the respondents, since no complaint was filed and no criminal case was registered, based on the alleged occurrence. Learned counsel for the petitioner contended that the finding of the Enquiry Officer is perverse and not supported by any evidence, and as the first respondent has passed the order of dismissal of the petitioner from service, based on the said finding of the enquiry officer, the impugned orders, according to him are unsustainable. Though the alleged offence is of break opening the lock of the container JD-V, in the premises of the Chennai Port Trust, and valuable imported materials, such as 11 numbers of C.B.Drums containing Chloroguine and Chloramphenical chemicals and 9 numbers of bales of imported costly raw silk, were said to be stolen and transported by a lorry, the respondents were duty bound to initiate criminal proceedings, so as investigate the crime and punish the culprits. But, admittedly, no complaint was lodged by the respondents before the police.

30. It is not disputed by the respondents that the petitioner had gone to his native place on the alleged date of occurrence, for which, he had been granted 15 days leave, by his Group Commandant with effect from 11.01.1999, on account of his sister's marriage and he had been permitted to avail holidays on 09.01.1999 and 10.01.1999, being second saturday and sunday respectively and accordingly, the petitioner had booked train tickets to go to his native place Jaipur, along with his family members by Jaipur Express, and on account of the same, he left Chennai Port Trust Campus at 4.00 p.m, and boarded the train at 5.30 p.m, at Chennai on 08.01.1999, for which, he had produced Railway tickets and other supporting documents, which is not disputed by the respondents.

31. As per the charge originally framed, prior to the 'de novo' enquiry, as stated in Article of Charge-I is that the petitioner herein, while functioning as Constable in CISF Unit, Chennai Port Trust, Chennai, at about 15 Hrs on 06.01.1999, visited the residential family quarters of HC/GD.B.S.Phakare (P.W.1) along with the another constable Somveer Singh (P.W.2) and conspired to arrange for the theft, but could not commit the same on the aforesaid date. But, as per the charge framed against the petitioner, subsequent to the order for 'de novo' enquiry, in addition to the earlier charges, it has been further incorporated that the petitioner was the brain behind the conspiracy.

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32. The second respondent, by his earlier order, dated 10.08.1999, had allowed the appeal preferred by the petitioner, and by setting aside the earlier enquiry report, and the final order passed by the first respondent, ordered for 'de novo' enquiry, the aforesaid order, available at page number 37 of the typedset, reads as follows :

> " The Enquiry Officer has mainly depended on the statement of Shri.B.K.Pattanayak, Asst. Commandant and his preliminary enquiry report to prove the charge. The

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Enquiry Officer failed to show the preliminary enquiry report and the statement of the Head Constable B.K.Phakare and Constable Somveer Singh when they appeared as PWs during the regular enquiry and obtain their signature. The Enquiry Officer did not ask any question during the regular enquiry about the connivance of constable R.N.Bera with them in committing the theft on 06.01.1999 which was not succeeded. Further, the Enquiry Officer also failed to ask about the contradictory statement during the preliminary and regular enquiries.

The charge framed against the Appellant is not proved with reference to the statements recorded during the course of enquiry and therefore, the findings of the Enquiry Officer fails. The Disciplinary Authority has also not taken into consideration of the irregularities committed by the Enquiry Officer. I therefore, set aside the enquiry report and also the final order, dated 29.06.1999 passed by the Disciplinary Authority. "

33. The finding of the enquiry officer, as per the earlier enquiry report, dated 27.05.1999 is that the delinquent officials, who involved in the theft case, namely, Head Constable B.S.Phakare and Constable Somveer Singh had given statements about the involvement of the petitioner herein, in the conspiracy, alleged to have taken place on 06.01.1999, and that they could not commit the theft on the said date. The said enquiry report was admittedly set aside by the second respondent. In the de novo enquiry, it is seen that the aforesaid delinquent Head Constable B.S.Pakhare and Constable Somveer Singh were examined as prosecution witnesses 1 and 2, however, they did not support the case against the petitioner. As contended by the learned counsel for the petitioner, there is absolutely no material to incorporate further, in the earlier charge that the petitioner was the brain behind the conspiracy.

34. We have gone through the enquiry report, wherein, HC/GD, B.S.Phakare (P.W.1) has answered for question number 1, in the cross examination by the petitioner as follows :

" Due to mental tension what ever Commandant / Asst. Commandant told me, I have written but I don't know what I have written."

Question number 4, put to HC/GD B.S.Pakhare (P.W.1), by the petitioner herein is as follows :

" In the above theft case, any relationship with me or not ?"

The answer given by P.W.1 is thus :

" There was no theft case, How I can say about your involvement ?"

While he was cross examined by the petitioner, Constable Somveer Singh (P.W.2) replied that he had mentioned the name of the petitioner, in his earlier statement, as compelled by the Assistant Commandant B.K.Patnayak.

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Therefore, it is quite clear that the prosecution witnesses 1 and 2 have not stated anything against the petitioner in the de novo enquiry, with regard to the alleged conspiracy and involvement of the petitioner herein.

35. As per the finding of the enquiry officer in his enquiry report, it has been stated that on 06.01.1999, at about 18.15 Hrs, Somveer Singh (P.W.2) and the petitioner were discussing with a civilian in a suspicious manner at the Parrys Corner, Chennai, and that was established by the statement given in writing by constable J.J.Godwin (PW5), P.W.6 and P.W.7.

36. It is seen that Constable J.J.Godwin (P.W.5), has given his statement that on 06.01.1999, he had seen the petitioner along with Somveer Singh (P.W.2) going together to the residence of HC/ GD B.S.Phakare (P.W.1), but strangely, in the cross examination by the petitioner, for question number 1 put to P.W.5, has replied in negative. The said question number 1 and as answered, available in the enquiry report is as follows : "Have you seen me entering in the house of HC B.S.Pakhare or coming out from the house ?", for which, P.W.5 answered "No", further, he has answered that he did not know the name of the street and quarters around the residence of HC/ GD, B.S.Phakare (P.W.1).

37. Even, as per the enquiry report, constable J.J.Godwin (P.W.5) could not say the door number, name of the street and the numbers of the residential quarters nearby the residence of HC/GD B.S.Phakare, but, he had given his earlier statement that, on 06.01.1999, that he had seen the petitioner herein, going together with constable Somveer Singh (P.W.2) to the house of the Head Constable, B.S.Phakare (P.W.1), and hence, the evidence of P.W.5 is only self contradictory.

38. According to the respondents, the alleged theft was committed on 09.01.1999 at about 3.50 a.m, but, there is absolutely no prima facie material or evidence to show that the petitioner had conspiracy in committing the crime, as held by the enquiry officer. The enquiry report does not speak about the name and other details of the person, with whom, the petitioner was talking in a suspicious manner at 6.15 p.m, on 06.01.1999 along with P.W.2. Further, the enquiry report does not speak any other details, so as to hold that the said civilian had involved in the alleged theft and in order to hold the alleged involvement of the petitioner. There is no material available in the enquiry report, to show that he had conspiracy with P.W.1 and P.W.2 and planned in committing the theft on 06.01.1999 itself. Even the persons, who were examined as prosecution witnesses, have not stated anything, so as to prima facie establish the alleged involvement of the petitioner in the crime, said to have been committed on 09.01.1999.

39. It is seen from the enquiry report, that only few of the prosecution witnesses have stated that they saw the petitioner going in to the residential quarters of the Head Constable B.S.Phakare (P.W.1) on

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06.01.1999, but they could not say even the door number, street and other particulars of the said residential quarters of P.W.1. Further, it is not in dispute that HC/ GD B.S.Phakare (P.W.1) was Head Constable and Somveer Singh (P.W.2) was a constable, like the petitioner in the CISF Unit, and as such, they were not strangers to each other. Therefore, even, if the statement of the said witnesses that the petitioner had visited the house of P.W.1, on 06.01.1999, along with P.W.2 is admitted as true, it would not be construed as evidence, for the alleged conspiracy against the petitioner in committing theft on 09.01.1999, in the absence of any substantive evidence.

40. In the enquiry report, there is no reliable material to show that the petitioner had hatched any conspiracy on 06.01.1999, along with P.W.1 and P.W.2 to commit theft on the said date. But, without any prima facie material or evidence, the enquiry officer has held that the charge against the petitioner has been proved. It is not in dispute that the petitioner had been to his native place, Jaipur, with his family members, when the alleged theft was occurred on 09.01.1999 at 3.50 a.m, and the stolen goods were allegedly transported in a lorry at about 5.00 a.m, on the aforesaid date.

41. It is pertinent to note that as per the finding of enquiry officer, as found in his enquiry report, the lorry, bearing registration number TMW 9412 was used to transport the stolen valuable imported goods from the premises of the Chennai Port Trust, and one Kumar, an outsider was instrumental for the alleged theft, that was committed on 09.01.1999 at 3.50 a.m, and the stolen goods were transported in the aforesaid lorry, bearing Registration Number TMW 9412. But, strangely, no criminal complaint was given by the respondents to the police to investigate the crime and to book the culprits, though valuable imported goods, such as 11 numbers of C.B.Drums containing Chloroguine and Chloramphenical chemicals and 9 numbers of bales of imported costly raw silk were allegedly stolen. Neither the owner of the said vehicle bearing registration number TMW 9412, nor its driver was summoned and examined for the reasons best known to the respondents.

42. According to the respondents, valuable imported materials, such as 11 numbers of C.B.Drums containing Chloroguine and Chloramphenical chemicals and 9 numbers of bales of imported costly raw silk were stolen by broke open the contained JD-V on 09.01.1999 at 3.50 a.m. The alleged occurrence is a theft of serious nature, which cannot be taken so lightly, by the respondents or their subordinate officers, despite the same, no criminal action was initiated by the respondents, to investigate the crime and punish the culprits. There is no satisfactory explanation from the respondents, as to why criminal complaint was not given before the police. As the alleged occurrence is a serious offence of theft of valuable imported materials at the premises of the port trust, by broke open the container. The respondents were duty bound to initiate criminal proceedings against the culprits, but, no criminal complaint was given by

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the respondents or their authorised subordinate officials before the police, for the reasons best known to them.

43. As the alleged occurrence is a serious crime committed within the premises of the Chennai Port Trust, by broke open the container JD-V and stolen valuable imported materials, the authorities could have initiated criminal action, as per procedure known to law. But, no criminal action was initiated by the respondents for the reasons best known to them, but has initiated departmental enquiry, as if the offence committed was within the purview of the domestic enquiry of the respondents, which is highly condemnable, since the failure in lodging criminal complaint, would safeguard the culprits, who had committed theft, by break opening the container JD-V and transported the stolen goods in a lorry. Even though, the respondents have stated that stolen goods were transported in the lorry, bearing Registration Number TMW 9412 at 5.00 a.m, on 09.01.1999, with the connivance of one Kumar, an outsider, without initiating criminal action, the actual fact of the alleged offence was not brought to light, by the respondents and the same has been suppressed in the grounds of domestic enquiry.

44. We are of the considered view that the respondents, without taking proper steps to initiate criminal proceedings, and to conduct investigation, in order to book the culprits, without realising their responsibility, for the reasons best known to the respondents , no criminal complaint was given before the police.

45. If the finding of the enquiry officer is against the evidence or not supported by evidence, it has to be construed as perverse finding. In this case, absolutely, there is no evidence or material to show that the petitioner, who had gone to his native place, Jaipur on 08.01.999, after getting proper sanction of 15 days leave, had conspired with other persons, P.W.1 and P.W.2 on 06.01.1999 and committed theft at the premises of Chennai Port Trust on 09.01.1999 at 3.50 a.m, The alleged conspiracy by the petitioner with Head Constable B.S.Phakare (P.W.1) and Constable, Somveer Singh (P.W.2) on 06.01.1999, has not been established by the respondents and therefore, the finding of the enquiry officer, with regard to the alleged conspiracy in committing theft, is without evidence.

46. On a perusal of the enquiry report and the impugned orders, we are of the considered view that there is no prima facie material or evidence available against the petitioner. Therefore, we are of the considered view that the finding of the enquiry officer not supported by evidence, has to be construed only as perverse finding and as such, the same is not sustainable in law and the punishment of dismissal of the petitioner from service imposed by the first respondent and confirmed by the second respondent, based on the perverse finding, is liable to be set aside and as such, the impugned orders passed by the respondents 1 and 2 are liable to be quashed.

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47. In the result, the impugned final order, passed by the first respondent, dated 18.06.1999 and the appellate order passed by the second respondent, dated 27.11.2000, confirming the said final order, are quashed. The petitioner is entitled to all service and monetary benefits. The writ petition is allowed. No order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

To

1. The Commandant
   Central Industrial Security Force,
   CISF Unit, Chennai Port Trust, Chennai.

2. The Deputy Inspector General
   Central Industrial Security Force,
   Southern Sector, (Head Qrs.,)
   Rajaji Bhavan, Besant Nagar, Chennai - 600 090.

1 cc To Mr.M.Dhamodaran, Advocate, SR.5588.
1 cc To Mr.Md. Ibrahim Ali, Advocate, SR.5175.

W.P.No.40458 of 2002

KG(CO)
RVL 06.02.2007

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